* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl. M.C. No. 6029-30/2006**

% Date of Decision:16th November, 2007

\# Dheeraj Kochhar & Anr. .....Petitioners

! Through Mr. Rajiv Thukral

versus

$ The State of NCT of Delhi. ..... Respondent

^ Through Mr. M.N. Dudeja, APP

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 assailing the order dated 24.01.2006 passed by the learned Metropolitan Magistrate in a case arising out of FIR No. 8/2003, Police Station Hauz Khas whereby charges for the offences under Sections 323/341/506/34 of Indian Penal Code ('IPC' in brief) were ordered to be framed against the petitioners and two others.

2. The case set out by the prosecution is that one Ms. Rajni Sharma resident of 40/1-3, Yusuf Sarai, New Delhi lodged a complaint with the Haus Khas Police station that everyday car stereos were being played on high volume outside her house as these were shops of car accessories and she had been making complaints about it to the police but of no avail. On 05.01.2003 also when a car stereo was being played at the shop by the name of Arun Car Décor on full volume she went down to ask him to reduce the volume he (name not mentioned in the FIR) started fighting with her and abused her. Thereafter, it has been alleged by the complainant in her complaint dated 05.01.2003, when she saw the owner of Batra Car Décor, Deepak, she asked him also to reduce the volume of the music on which his brother also started fighting and abusing her and also started beating her husband. She further alleged that Shamsher Singh of Kaveri Car Touch, petitioner no. 2, and his wife (who has not been charge-sheeted in view of the supplementary statement of the complainant that she had in fact not beaten her) also started beating her and that their fighting with her had become a daily affair and these people were threatening her with her life everyday.

3. On the basis of the said complaint FIR no. 8/2003 was registered at Hauz Khas police station on 6-1-03. On the same day four persons were arrested including the present two petitioners. After completion of the investigation the police filed a charge sheet in court against the two petitioners and two others, namely, Gagan Batra and Devender Singh. After hearing arguments from both

sides the learned Metropolitan Magistrate ordered framing of charges under sections 341/323/506/34 IPC against the petitioners as well as their other two co-accused persons vide impugned order dated 24.01.2006.

4. The petitioners thereafter challenged the impugned order in revision before the learned Additional Sessions Judge who by his order dated 04.08.2006 dismissed the said revision petition.

5. Aggrieved by the said order on charge the petitioners have now come to this court for the redressal of their grievance by invoking Section 482 Cr.P.C. The learned counsel for the petitioners contended that a bare reading of the complaint dated 05.01.2003 as well as the supplementary statement dated 06.01.2003 of the complainant shows that no role has been assigned to petitioner Dheeraj Kochar and even against petitioner Shamsher Singh no case is made out and particularly for the offence under Section 341.

6. On the other hand, learned APP submitted that the petitioners' revision petition having been rejected by the Sessions Court the present petition would not be maintainable and is liable to be dismissed on this ground alone. This was the only submission made by him.

7. As far as petitioner no. 1 Dheeraj Kochar is concerned, as has been noticed already, he was not named in the FIR. It appears that his name figured in the supplementary statement of the complainant recorded on 6-1-03. However, on going through that supplementary statement I find that all that was stated by the

complainant in that statement was that the police had rightly arrested the four persons that day on her pointing out including these two petitioners. However, in that statement nothing was said as to what had been done by the petitioner Dheeraj Kochar at the time of the incident. A perusal of the order of the Sessions Court whereby the revision petition of the petitioners was rejected shows that even the learned Additional Sessions Judge was in some doubt regarding the involvement of accused Dheeraj Kochar and to clarify that doubt he had called the investigating officer and then the investigating officer had informed the Court that Dheeraj Kochar was arrested because of the afore said subsequent statement of the complainant Rajani Sharma. The leaned Additional Sessions Judge on the basis of that statement of the investigating officer that he had arrested Dheeraj Kochar on the pointing out of the complainant came to the conclusion that the complainant must have told the investigating officer that Dheeraj Kochar was also involved. However, in my view, this finding was conjectural and there was no basis for arriving at that conclusion since the complainant herself had not made any statement to that effect in her supplementary statement under Section 161 Cr.P.C. also. I had asked learned APP if there was any other material against the petitioner Dheeraj Kochar except the aforesaid supplementary statement of the complainant and in reply learned APP submitted that there was no other material against Dheeraj Kochar. In my view, simply on the basis of the supplementary statement of the complainant to the effect that the police had rightly arrested him

on her pointing out he could not be charged for any offence because the complainant had not said anything against him as to what role was played by him at the time of the incident. Therefore, as far as petitioner no. 1 Dheeraj Kochar is concerned, he is entitled to be discharged despite the fact that his revision petition had been dismissed by the Sessions Court. In this regard learned counsel for the petitioners had cited two judgments of the Hon'ble Supreme Court which are reported as **1997 (1) Recent Criminal Reports 724** and **1995 (IV) SCC 41** wherein it had been held that even after dismissal of a revision petition filed by an accused in the Sessions Court against an order of framing of charge against him is dismissed the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. can quash the charges against that accused if it comes to the conclusion that it was necessary to interfere to prevent abuse of process of Court or to secure ends of justice. In the present case, there being no material whatsoever having been brought on record by the prosecution against petitioner Dheeraj Kochar it would definitely be an abuse of process of Court if he is made to face the trial. So, to secure the ends of justice, this petition in respect of petitioner no. 1 Dheeraj Kochar deserves to be allowed.

8. However, as far as petitioner no. 2 Shamsher Singh is concerned, the petition deserves to be allowed only partly in respect of the charge framed against him under Section 341 IPC. Learned APP, in this regard, very fairly had stated that there was no material for framing of charge against the accused under Section

341 IPC. As far as charges for other two offences are concerned, the trial Court was justified in framing those charges against petitioner no. 2 Shamsher Singh in view of the clear allegations in that regard made by the complainant in the FIR.

9. In the result, this petition is allowed in respect of the petitioner no. 1 Dheeraj Kochar and resultantly he stands discharged of all the charges framed against him by the trial Court vide order dated 24-01-2006 and the petition in respect of petitioner no. 2 Shamsher Singh is allowed partly discharging him for the offence under Section 341 IPC only.

November 16, 2007 **P.K.BHASIN,J**
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